

Appl. No. 10/601,599
Amendment dated: March 7, 2005
Reply to OA of: November 8, 2004

REMARKS

Applicants have amended the claims to more particularly define the invention taking into consideration the outstanding Official Action. Claims 1 and 2 have been combined. That is, the limitation from claim 2 has been added to claim 1. The limitation from claim 3 have been added to claim 2 and claims 3-11 have been canceled without prejudice or disclaimer. New claims 12-17 have been added to the application to more particularly define the invention as fully supported by the specification as originally filed. Applicants most respectfully submit that all of the claims now present in the application are in full compliance with 35 USC 112 and are clearly patentable over the references of record.

The rejection of claims 1, 2 and 4-11 under 35 U.S.C. §102(b) as being anticipated by Russ et al., EP 0 668 328 A2 has been carefully considered but is most respectfully traversed.

Applicant wishes to direct the Examiner's attention to MPEP § 2131 which states that to anticipate a claim, the reference must teach every element of the claim.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed.Cir. 1990).

Akzo N.V. v. International Trade Comm'n, 808 F.2d 1471, 1 USPQ2d 1241 (Fed. Cir. 1986) (Claims to a process for making aramid fibers using a 98% solution of sulfuric acid were not anticipated by a reference which disclosed using sulfuric acid solution but which did not disclose using a 98% concentrated sulfuric acid solution.).

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According to the amended claims, the component percentage of the dye composition of claim 1 differs from that of EP 0 668 328 A2. The components of the present invention comprise at least 15% by weight. As for the components in EP 0 668 328 A2, the component percentage of component B26 is not 21.8% as urged in the Official Action but 21.8 grams by weight and the other component B34 is about 1000 grams by weight; that is to say, component B26 is 2.18% by weight and component B34 is 97.82% by weight. As a result, the present invention is not anticipated by the prior art. Accordingly, it is most respectfully requested that this rejection be withdrawn.

The component (a) or component (b) of the present invention comprises more than 15% by weight so that the present invention has excellent perspiration-light fastness. With regard to the reference EP 0 668 328 A2, of which component B26 is 2.18% by weight and component B34 is 97.82% by weight, the component percentage of the composition is to adjust the degree of dyeing without changing the characteristic of the dye composition; that is, the composition of EP 0 668 328 A2 does not have a good perspiration-light fastness. Therefore, the present invention is progressive in comparison to reference EP 0 668 328 A2. Applicants submit herewith a "Fiber Reactive Dyes Test Report" to clarify the dye characteristic between EP 0 668 328 A2 and the present invention. Accordingly, it is most respectfully requested that this rejection be withdrawn.

The rejection of claim 3 under 35 U.S.C. 103(a) as being unpatentable over Russ et al. has been carefully considered but in view of the amendments to the claims and the arguments presented above and the following comments.

Applicants wish to direct the Examiner's attention to the basic requirements of a prima facie case of obviousness as set forth in the MPEP § 2143. This section states that to establish a prima facie case of obviousness, three basic criteria first must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings. Second, there must be a

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reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Section 2143.03 states that all claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

Applicants also most respectfully direct the Examiner's attention to MPEP § 2144.08 (page 2100-114) wherein it is stated that Office personnel should consider all rebuttal argument and evidence present by applicant and the citation of In re Soni for error in not considering evidence presented in the specification. Accordingly, it is most respectfully requested that this rejection be withdrawn.

The rejection of claims 1-9 under 35 U.S.C. 103 as unpatentable over Corso '583 has been carefully considered but is most respectfully traversed.

It is urged that Corso discloses storage stable compositions of reactive dyes containing beta-sulfatoethylsulfonyl groups. It is further stated that Corso differs from the instant claims in that there is no example of a mixture, nor are the percentage or ratio of the dyes to each other disclosed. It is further urged that the presently claimed composition are obvious. However, the necessary motivation to combine the teaching in the expectation of success is not present in the prior art relied upon in the rejection. Applicants' teaching may not be relied upon to provide the necessary motivation to modify the prior art to arrive at the claimed invention. In re Fritch, 23 USPQ 1780, 1784(Fed Cir. 1992) ("It is impermissible to engage in hindsight reconstruction of the claimed invention, using the applicant's structure as a template and selecting elements from references to fill the gaps.). Moreover, obvious to try is not the standard of

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obviousness under 35 USC 103.


With regard to Corso, of which the purpose is to form a stable dye aqua composition, the component percentage is different from that of the present invention and the composition of the Corso reference does not have the characteristic of perspiration-light fastness either. Accordingly, it is most respectfully requested that this rejection be withdrawn.

The Examiner also states that Schrell et al., '007 and its equivalent EP 0 683 251 are provided as disclosing the two claimed dyestuffs used to dye viscose rayon. These references have been noted but do not, alone or in further combination with the references of record, rendered the presently claimed invention unpatentable. Therefore, the presently claimed invention is both inventive and progressive over the prior art of record. Accordingly, it is most respectfully requested that this rejection be withdrawn.

In view of the above comments and further amendments to the claims, favorable reconsideration and allowance of all of the claims now present in the application are most respectfully requested.

Respectfully submitted,

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